

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

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United States of America,)
Plaintiff,)
vs.) **FILE NO. 1:16-cr-184**
William Anthony Fly,)
Defendant.)
- - - - -

T R A N S C R I P T
O F
P R O C E E D I N G S
CHANGE OF PLEA - JANUARY 5, 2018
Pages 1-32

HELD AT: QUENTIN BURDICK UNITED STATES COURTHOUSE
655 FIRST AVENUE NORTH
FARGO, NORTH DAKOTA 58102
BEFORE: THE HONORABLE DANIEL L. HOVLAND
COURT REPORTER: KELLY A. KROKE

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A P P E A R A N C E S

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P R O C E E D I N G S

(January 5, 2018: The following proceedings commenced at 8:15 a.m.):

THE COURT: Good morning. We'll open the record in the case of United States of America versus William Fly. On behalf of the federal government's AUSA Matt Greenley.

MR. GREENLEY: Good morning.

THE COURT: Representing the defendant looks to be Chris Bellmore from the Federal Public Defender's Office in Bismarck.

Mr. Fly, how are you today?

THE DEFENDANT: Okay, I guess.

THE COURT: All right. This is scheduled for a change of plea hearing. The charge is transportation with intent to engage in criminal sexual activity. The parties filed a written Plea Agreement on January 3rd of this year along with a Plea Agreement Supplement.

Mr. Greenley, maybe you could outline how we got where we are today.

MR. GREENLEY: Yes, Your Honor. As the Court very well knows, this case has been pending for a long time. The current charge in the Superseding Indictment is the same charge that's in the Information.

1 The only difference is that the Information only alleges
2 the criminal offense of incest with the factual basis
3 that we'd anticipate Mr. Fly would admit to. He won't
4 admit to the forcible act as part of the Plea Agreement.
5 Otherwise the agreement is fairly straight-forward.

6 The United States concedes that it will
7 recommend a sentence within the guideline range as
8 determined by the Court. The United States has agreed
9 not to recommend a lifetime supervision but only 10
10 years of supervision and other than that the parties
11 have no further agreement as far as sentencing. Mr. Fly
12 is free to argue for a -- whatever sentence he wants.

13 THE COURT: And I noticed in the Plea
14 Agreement the parties have at least agreed on a
15 particular Sentencing Guideline provision and everybody
16 understands that it's going to be up to the United
17 States Probation Office to determine what the
18 appropriate Sentencing Guideline is.

19 MR. GREENLEY: I believe so, Your Honor. We
20 anticipate a contested sentencing hearing. I would note
21 for the Court's benefit too that if Mr. Fly enters his
22 plea today the United States will move for the extra
23 third point. I know that this is very late in the
24 proceedings, but we will save expenses for expert
25 witnesses and travel bringing in a jury and so forth.

1 THE COURT: Mr. Bellmore, anything you wish
2 to add to that summary?

3 MR. BELLMORE: No, Your Honor. That's my
4 understanding of the Plea Agreement.

5 THE COURT: Very well. Mr. Fly, I am
6 required to visit with you on the record here about your
7 intention to plead guilty to this charge. Most of what
8 I need to visit with you about are matters that have
9 already been addressed in the Plea Agreement. The law
10 requires we have a hearing in open court, and I need to
11 satisfy myself that you understand the charge that's
12 brought against you and what the maximum penalties are
13 and that you understand the terms of the Plea Agreement.
14 If you have any questions, you're free to interrupt me
15 and ask questions throughout the hearing. If you've got
16 questions about the Plea Agreement, this is your
17 opportunity to raise those.

18 But do you have a copy of the Plea Agreement
19 there in front of you?

20 MR. BELLMORE: Yes, Your Honor. I do have a
21 copy of the Plea Agreement. Just so the Court's aware,
22 it appears as though this is one of the copies without a
23 signature but Mr. Fly did -- I did witness his signing
24 of the Plea Agreement.

25 THE COURT: Okay. So, Mr. Fly, just to

1 start out here, could you tell me how old you are today.

2 THE DEFENDANT: Forty-nine.

3 THE COURT: All right. And are you in
4 relatively good health today?

5 THE DEFENDANT: I have quite a few different
6 ailments.

7 THE COURT: I've read your letter carefully
8 that you wrote to me the other day, but in terms of your
9 overall mental health is your mind clear today?

10 THE DEFENDANT: (No response.)

11 THE COURT: I mean, do you understand why
12 we're here today?

13 THE DEFENDANT: I understand why we're here.

14 THE COURT: All right.

15 THE DEFENDANT: I have a good deal of
16 anxiety.

17 THE COURT: Sure. Well, that's
18 understandable.

19 THE DEFENDANT: You know, because of the
20 circumstances of the jail and being tortured over there,
21 I've -- you know, I've had some hesitancy about this in
22 all honesty with you and everything. But, you know, it
23 just seems impossible to go for it against Goliath, you
24 know.

25 THE COURT: All right. And do you feel

1 you've had enough time to visit with Mr. Bellmore about
2 the case and about the Plea Agreement?

3 THE DEFENDANT: I think it's been more than
4 spontaneous but -- I don't know.

5 THE COURT: Well, you've certainly met with
6 him before you signed the Plea Agreement, correct?

7 THE DEFENDANT: I met with him on the night
8 that we signed the Plea Agreement.

9 THE COURT: And did you read the Plea
10 Agreement before you signed it?

11 THE DEFENDANT: We went over it, yes, Your
12 Honor.

13 THE COURT: All right. And did he give you
14 an opportunity to ask questions about what it all meant
15 for you?

16 THE DEFENDANT: We went over it, yeah, in
17 that respect.

18 THE COURT: All right. And do you have any
19 criminal convictions in your past or do the parties
20 anticipate he's going to fall within Criminal History
21 Category I?

22 MR. BELLMORE: I think it's II, Your Honor.
23 I think there's a qualifying felony conviction so he'd
24 have three scorable points based on a conviction out of
25 Arizona.

1 THE COURT: And what was that conviction?

2 MR. BELLMORE: I believe it was a theft
3 case.

4 THE COURT: How many years ago?

5 THE DEFENDANT: 2000 -- 1998 is when it
6 occurred.

7 MR. BELLMORE: It tolled because of the
8 probation revocation. I think it's eight if memory
9 serves.

10 THE COURT: And did you serve any time on
11 that conviction?

12 THE DEFENDANT: Probation and then a
13 suspended sentence.

14 THE COURT: Was that a felony?

15 THE DEFENDANT: It was designated and it was
16 supposed to be turned to a misdemeanor.

17 THE COURT: Okay. So let's run through the
18 Plea Agreement. Do you have a copy there in front of
19 you?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: On page 10 of the Plea
22 Agreement, there's signatures of both attorneys and
23 yourself. Do you recall signing the Plea Agreement on
24 January 2nd of this year?

25 THE DEFENDANT: Yeah. This isn't the copy

1 that I signed but I did sign a copy of this.

2 THE COURT: All right. But if you could
3 turn to paragraph 7, which summarizes what the maximum
4 penalties are for this offense, this crime that's set
5 forth in the Information, which is the document that's
6 the charging document in this case, it's a felony. It
7 carries a maximum of 10 years in federal prison, a
8 maximum fine of \$250,000. You can be placed on what's
9 known as supervised release for a minimum of five years
10 all the way up to life, and as a part of the sentence
11 you're required to pay what's called a special
12 assessment of \$100. Those are the maximum penalties
13 under federal law for this crime. Do you understand
14 that, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: Paragraph 8 of the Plea
17 Agreement outlines what your rights are as a defendant.
18 Everyone charged with a crime in Federal Court has the
19 right to a jury trial. That means that nobody has to
20 plead guilty; that if you wish to proceed to a jury
21 trial and have a jury of 12 persons hear the evidence in
22 this case and decide whether you are guilty or not
23 guilty, you certainly have a right to do that.

24 When cases proceed to trial as the defendant
25 you are presumed innocent and the government always has

1 the burden of proof at trial. The government has the
2 responsibility of calling witnesses and presenting
3 evidence to prove up the charges. You'd be represented
4 by an attorney at trial and your attorney has an
5 opportunity to cross-examine government's witnesses and
6 challenge their credibility.

7 As a defendant you also have a right to put
8 on a case. You can have witnesses brought in to testify
9 on your behalf. You also have a right to testify at a
10 criminal trial if you wished but you also have a right
11 to remain silent. That means that nobody could ever put
12 you on the stand during a trial and question you what's
13 gone on here unless you permitted that to occur.

14 Do you understand all of that?

15 THE DEFENDANT: I do, Your Honor. But I
16 feel also that I would be greatly discriminated by a
17 jury and that's one of the things that's putting me
18 where I'm at at this point because, you know, I was born
19 intersex, which otherwise is known as hermaphrodite, and
20 I identify as female. And this, you know, would greatly
21 discriminate me in the North Dakota region and there's
22 plenty of recent media about that. People that are --

23 THE COURT: Members of the jury don't know
24 that about you and they wouldn't know that about you at
25 trial unless you would be the person that chose to

1 reveal that to them. But you understand you have a
2 right to a jury trial?

3 THE DEFENDANT: I do understand, Your Honor.

4 THE COURT: And in addition to that you
5 have -- if this case proceeded to a trial and you were
6 found guilty by a jury, you have certain rights of
7 appeal. They include your right to appeal the jury's
8 decision as well as a right to appeal the sentence that
9 you would be ordered to serve.

10 Now you also have a right to plead guilty.
11 In the federal criminal justice system year after year
12 somewhere in the range of 75- to 80,000 people are
13 sentenced each year in Federal Court and they keep very
14 detailed statistics about those sentencings. And the
15 statistics, which I follow very closely, have generally
16 revealed that about 97 percent of criminal cases are
17 resolved by defendants signing a Plea Agreement and
18 pleading guilty. At least last year it was 97 percent.
19 Generally it's between 95 and 97 percent year after
20 year.

21 But what you need to understand is that when
22 you sign a Plea Agreement and you plead guilty you do
23 give up some important rights and they include giving up
24 your right to a jury trial as well as giving up your
25 rights of appeal that I'll talk to you about in just a

1 few moments. But do you understand that you're giving
2 that up by signing a Plea Agreement and pleading guilty?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And you've made the decision
5 that you intend to plead guilty this morning; is that
6 correct?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And has anyone -- throughout
9 this process do you feel that you've been intimidated or
10 threatened or coerced in some way to come in here this
11 morning to plead guilty or is it a decision that you
12 have made on your own with the help of your attorney?

13 THE DEFENDANT: Well, it's a decision I made
14 with my attorney.

15 THE COURT: All right. Did I interrupt you?
16 Is there something more you wanted to say?

17 THE DEFENDANT: No.

18 THE COURT: Okay. And if you could turn to
19 paragraph 13. It's a paragraph that starts the
20 discussion about Sentencing Guidelines and in the
21 federal criminal justice system for the last 30 years we
22 have had a comprehensive set of what are known as the
23 Sentencing Guidelines. This manual that I'm holding up
24 here (indicating), do you see that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: It's a Sentencing Guideline
2 Manual. It's been around for a long time now. And it's
3 crystal clear under the law before any defendant is
4 sentenced in Federal Court in a criminal case the judge,
5 the sentencing judge, namely myself, is required to
6 determine what the appropriate Sentencing Guidelines are
7 and what the Sentencing Guideline range is.

8 So we have to consult with this manual and
9 we look at two primary factors. One is your criminal
10 history and the other is we look at the crime that you
11 plead guilty to. With respect to criminal histories, in
12 the Sentencing Guideline Manual there are six criminal
13 history categories that people can fall into, and VI is
14 the most serious of the criminal histories categories
15 and it's all based on your prior convictions. And as we
16 sit here today we're not exactly certain whether you
17 will fall in Criminal History Category I or II. The
18 attorneys seem to think it will probably be Criminal
19 History Category II but it could be different than that.
20 Usually the attorneys who have had a chance to look at
21 your prior convictions can gauge what criminal history
22 category you're in but once in a while there's other
23 things that may turn up.

24 But before we ever have the sentencing
25 hearing you and your attorney will have an opportunity

1 to read through a report that will be prepared called a
2 Presentence Investigation Report. That report will list
3 all of your prior convictions and arrests, and the
4 United States Probation Office prepares that report.
5 They go through your prior convictions and then they
6 assign points to them based on the age of the conviction
7 and the length of the sentence and things of that sort.
8 They'll assign anywhere from zero to three points to
9 convictions and then they add up those points and then
10 it tells us what criminal history category that you're
11 in.

12 But you and Mr. Bellmore will have a chance
13 to go through that, and if Mr. Bellmore thinks that the
14 United States Probation Office didn't properly calculate
15 your criminal history, he has a chance to challenge that
16 before we ever get to a sentencing hearing. But usually
17 by the time we get to the sentencing hearing it's
18 crystal clear whether somebody's in Criminal History
19 Category I or II or whatever it might be. If it's still
20 unclear then I have to make the final decision about
21 what criminal history category that somebody's in, but
22 generally in any given year I have to do that maybe one
23 or two times at the most because your criminal history
24 is fairly black and white. You understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: So we'll just function today
2 with the assumption that you're in Criminal History
3 Category II. And the other factor that we look at is
4 the crime that you plead guilty to, and in the federal
5 system there are thousands of crimes and every one of
6 them has a certain number value associated with it.
7 They call it the base offense level for that crime. And
8 I'm not sure the parties have agreed on that in this
9 case.

10 MR. GREENLEY: No, Your Honor. We've left
11 it open to argument.

12 THE COURT: Okay. And do we have a range
13 that the parties are going to argue about in terms of a
14 base offense level with adjustments or is that still
15 wide open?

16 MR. GREENLEY: Your Honor, I think because
17 the cross-reference under that guideline changes it
18 significantly, the parties haven't agreed to any
19 particular range.

20 THE COURT: All right. There's several
21 different possibilities of what Sentencing Guideline
22 provision will apply and what the number value is
23 associated with this crime that you're pleading guilty.
24 Where it stands in the Plea Agreement is that that's
25 left open for argument. So both sides can argue as

1 aggressively as they want as to what they believe is an
2 appropriate Sentencing Guideline range and what
3 adjustments, if any, apply to that. And then paragraph
4 13 and 14 --

5 THE DEFENDANT: Your Honor?

6 THE COURT: Yes.

7 THE DEFENDANT: Sorry to bother you on this,
8 but would it just help if I went to trial on this to
9 determine that better or no?

10 THE COURT: Well, the trial doesn't
11 determine the Sentencing Guideline range. It's the
12 crime that you're convicted of. Whether you plead
13 guilty to it or you're found guilty at a trial by a
14 jury, ultimately it's going to be left up to the United
15 States Probation Office to go through the Sentencing
16 Guideline Manual and determine what Sentencing Guideline
17 provisions apply. And then it's left up to the
18 attorneys to argue whether they believe those
19 calculations are accurate or not.

20 THE DEFENDANT: Well, kind of what I'm
21 saying, Your Honor, is would it shed more light on it
22 to --

23 THE COURT: No, I don't think it would shed
24 more light on the situation. Sitting here today, I
25 mean, I ultimately am going to be the one that has to

1 decide what the appropriate Sentencing Guidelines are
2 whether there's a trial or not. The statutory maximum
3 is 10 years in this case so we know that's the cap, but
4 there could be a wide range of sentences below that.
5 And both attorneys have preserved the right to make
6 arguments as to what they believe is an appropriate
7 Sentencing Guideline and what they believe is an
8 appropriate sentence.

9 Now in addition to the Sentencing
10 Guidelines, there's a number of other sentencing factors
11 that every judge is required to consider before we
12 sentence people whether there's a trial or not. Those
13 sentencing factors are all outlined in a federal law.
14 The law is called -- the citation to it is 18, United
15 States Code, Section 3553 subpart (a). And Mr. Bellmore
16 can make you a copy of that statute if you would like to
17 see it, and that statute lists nine or 10 other factors
18 that I'm required to consider; such things as your
19 history and background and the nature and circumstances
20 of this offense and how to best structure a sentence
21 that will protect the public and deter further
22 misconduct and afford you opportunities for
23 rehabilitation in sentencing. And I can't outline all
24 nine or 10 of those for you but every judge in this
25 country is required to look at those.

1 So we have the Sentencing Guidelines and
2 then we have these 3553(a) sentencing factors that I
3 mentioned. That has to be done in every case whether
4 they go to trial or not. And both attorneys have the
5 right at a sentencing hearing to argue to me what they
6 believe is an appropriate, reasonable sentence, how
7 they -- what they believe are the appropriate Sentencing
8 Guidelines, what they believe are the important
9 sentencing factors, these 3553(a) factors that I should
10 take into consideration.

11 And you are also given an opportunity at a
12 sentencing hearing to tell me what you believe is an
13 appropriate sentence. Nobody's prohibited from speaking
14 up and telling me what they believe should be the
15 appropriate outcome in this case. Understood?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Okay.

18 THE DEFENDANT: Thank you.

19 THE COURT: Do you have any questions about
20 Sentencing Guidelines or anything of that sort?

21 THE DEFENDANT: You seemed to cover it.
22 Thank you.

23 THE COURT: All right. At the sentencing
24 hearing both sides can also call witnesses that might
25 support their argument, and you are entitled to call

1 witnesses, character witnesses, as well as submit
2 letters from people that know you well and can speak of
3 your character, and all of that are matters that I'm
4 required to consider. But we're looking at anywhere
5 from zero to 10 years in this case for a sentence.

6 Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And, I don't know, oftentimes
9 when cases go to trial then there's a wider range of
10 possible sentences because you've also -- you don't get
11 any credit for accepting responsibility in signing a
12 Plea Agreement and avoiding all the time and expense
13 associated with a trial as well as the heartaches that
14 flow to everybody.

15 So let's move on in the Plea Agreement. If
16 you could turn to paragraph 22, that starts near the
17 bottom of page 7. Do you see that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And paragraph 22 is entitled
20 "Defendant's Waiver of Appeal" and the words "waiver of
21 appeal" simply mean giving up your right of appeal.
22 These are important paragraphs in Plea Agreements. I
23 have seen thousands of Plea Agreements over the years
24 and I can tell you that not only in North Dakota but
25 elsewhere throughout the country in Federal Court most

1 Plea Agreements contain a paragraph similar to this
2 where defendants have agreed to give up their right of
3 appeal after they've been sentenced.

4 These paragraphs are intended to put an end
5 to these cases after you as a defendant have been
6 sentenced. We're trying to eliminate or at least
7 minimize the possibility of any defendant coming back
8 and trying to reopen these cases after we've had a
9 sentencing hearing. And the Courts of Appeals
10 throughout the country have all said to defendants that
11 Plea Agreements are considered to be contracts, and if
12 you sign a Plea Agreement you have entered into a
13 contract with the federal government and if you have
14 agreed that you will not appeal in that Plea Agreement
15 you're going to be held to that contract term like any
16 other contract that a person might sign in life.

17 When you wade through the entirety of
18 paragraph 22, it's somewhat confusing because it
19 contains a lot of fancy lawyer-like language but here's
20 basically what it means. When you cut through all the
21 legal jargon, it simply means that before I sentence you
22 I'm required to determine what the appropriate
23 Sentencing Guideline range is by going through this
24 manual. Ultimately I have the final say about what are
25 the appropriate Sentencing Guidelines. This paragraph

1 goes on to say that as long as I sentence you anywhere
2 within that range that's determined by the Sentencing
3 Guidelines that you have agreed that you will not appeal
4 or challenge that. You have in essence agreed that you
5 will live with the sentence that I order you to serve in
6 this case after giving careful consideration to the
7 Sentencing Guidelines and these other sentencing factors
8 that I mentioned.

9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Once in a while when defendants
12 get sentenced in Federal Court they go off to federal
13 prison. They start rubbing shoulders with other inmates
14 who consider themselves to be legal experts and they get
15 convinced that they got a bad deal and they want to try
16 to back out of their Plea Agreement. So they start
17 filing motions to withdraw from their Plea Agreement.
18 They start filing motions to try to reopen the case.
19 But generally defendants after they've been sentenced in
20 accordance with the Plea Agreement and if they have
21 agreed that they will not appeal from those appeals,
22 those efforts to try to reopen cases are rarely
23 successful. I've been here 16 years. I've never had a
24 defendant that's successfully tried to challenge one of
25 my sentences when I've sentenced them in accordance with

1 a Plea Agreement like this. The Courts of Appeals to
2 those defendants generally say: Mr. Defendant, you've
3 signed a Plea Agreement. You've signed a contract.
4 You've told us that you're not going to appeal. We're
5 not going to listen to your appeal. Case dismissed is
6 basically what the decisions say on appeal. So it's an
7 important paragraph.

8 You understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you have any questions about
11 what it means to give up your right of appeal?

12 THE DEFENDANT: No, Your Honor. I
13 understand fully. Thank you.

14 THE COURT: And then if you could turn to
15 paragraph 23, which is entitled "Sex Offender
16 Registration - Megan's Law/Adam Walsh Act Notice." I'm
17 not sure about this provision but did the attorneys both
18 preserve the right to argue whether there's going to be
19 a need for this gentleman to register after this
20 conviction and sentence? Is that the way I --

21 MR. BELLMORE: Yes, Your Honor. The defense
22 position is going to be that it's not applicable in this
23 case.

24 THE COURT: Okay.

25 MR. GREENLEY: Yes, Your Honor. We've

1 modified the language in that paragraph from our
2 standard plea so that the parties can argue either way.

3 THE COURT: Do you understand that, sir?

4 THE DEFENDANT: (No response.)

5 THE COURT: Well, let me tell you this way.
6 There's some convictions under federal law that require
7 that the defendant register as a sex offender. As we
8 sit here today, I'm not sure that this is one of those
9 convictions and the attorneys aren't a hundred percent
10 certain either. That's why they've kind of left it
11 open. They've left it open so that both of them can
12 argue whatever position they want to take on this sex
13 offender registration provision. Ultimately I'll have
14 to decide, after I look at the law and consider their
15 arguments, whether this is the type of conviction that
16 will require you to register as a sex offender.

17 But I honestly don't know as I sit here
18 today whether this conviction falls within this Megan's
19 Law/Adam Walsh Act registration requirement.

20 THE DEFENDANT: Well, when I looked it over
21 it did not, Your Honor.

22 THE COURT: Okay. And I'll give you an
23 opportunity at the time of the sentencing hearing to
24 tell me why you feel that way as well.

25 THE DEFENDANT: Thank you. I appreciate

1 that.

2 THE COURT: But generally what will happen
3 is that before we have the sentencing hearing both
4 attorneys can submit a Sentencing Memorandum, a legal
5 argument summarizing their position, and before we have
6 the sentencing hearing I'll read those. I'll go back
7 and look at the law and the cases that they cite and
8 I'll have to determine what I believe is appropriate and
9 what the law requires in the case. Fair enough?

10 THE DEFENDANT: Thank you, Your Honor. Yes,
11 it is. Thank you.

12 THE COURT: All right. Then finally if you
13 could take a look at paragraph 6 which is found in the
14 middle of page 2, and paragraph 6 is just a short
15 summary outlining the underlying facts and explaining
16 why you were charged with this crime in Federal Court.
17 As the judge I can't accept a plea of guilty from
18 somebody unless I have information in front of me that
19 explains why they were charged with the crime that they
20 were and what some of the basic underlying facts are. I
21 can't just come in and accept a plea from somebody that
22 says: I didn't do anything wrong. So almost every Plea
23 Agreement signed by a defendant in this country in
24 Federal Court is going to contain a short summary of
25 what occurred that explains why this crime was charged.

1 When you signed the Plea Agreement, you have
2 in essence indicated to me that you've read it, you
3 understand it, you agree with it and you live with it.
4 Is the factual information contained in paragraph 6 of
5 the Plea Agreement true and accurate?

6 THE DEFENDANT: That is what I was charged
7 with and it is what I signed too, Your Honor, yes.

8 THE COURT: Is there anything else that
9 either attorney feels that they need to offer into the
10 record as a factual basis for this plea other than
11 paragraph 6?

12 MR. BELLMORE: No, Your Honor.

13 MR. GREENLEY: I don't believe so, Your
14 Honor.

15 THE COURT: All right. So, Mr. Fly, we've
16 covered that point in the hearing where I'm simply going
17 to ask you how you intend to plead to this charge
18 brought against you in this new document called an
19 Information. I can -- I can read you the entire charge
20 or I can simply summarize it for you and ask how you
21 plead, whatever you wish me to do.

22 THE DEFENDANT: Summarize it.

23 THE COURT: All right. Do you have any
24 questions before I ask you how you plead to this charge?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: All right. You've been charged
2 in a document called an Information with a crime that is
3 entitled transportation with intent to engage in
4 criminal sexual activity. It's a charge that's
5 discussed in paragraph 6 of the Plea Agreement. As to
6 that charge, Mr. Fly, how do you wish to plead this
7 morning? Guilty or not guilty?

8 THE DEFENDANT: Guilty, Your Honor.

9 THE COURT: The Court accepts your plea of
10 guilty, Mr. Fly. I find that you are a competent
11 individual who understands what he's been charged with
12 in Federal Court and what the maximum penalties are. I
13 find that you've entered a knowing and voluntary plea
14 here this morning. I further find that there are
15 sufficient facts that you have agreed to in paragraph 6
16 of the Plea Agreement that support finding you guilty of
17 this offense. So in accordance with Rule 11 I accept
18 your plea of guilty.

19 Let me tell you what happens next. Every
20 time a defendant pleads guilty in Federal Court before
21 the sentencing hearing is conducted we have the United
22 States Probation Office prepare this Presentence
23 Investigation Report. It's done in every case, felonies
24 and misdemeanors.

25 To do that there will be an officer assigned

1 to prepare that report. I'm not sure who it is but it
2 will be a federal probation officer probably in Fargo
3 here, possibly in Bismarck, but they will need to visit
4 with you.

5 They need to interview you to gather
6 background biographical information from you. The
7 report includes information about your family, your
8 education, your work experience. It includes
9 information about your prior arrests and convictions and
10 it also includes a rather lengthy discussion about the
11 Sentencing Guidelines and how they apply to you and
12 which guidelines apply. The interview will probably
13 take place in the next two to three weeks, probably be
14 in Fargo here. It could be face-to-face. It could be
15 by phone or video conference, but it will be set up
16 through Mr. Bellmore because he has a right to be there
17 when you're interviewed. If he thinks that something
18 inappropriate's being asked, he has a right to object
19 and put an end to the questioning. But usually that
20 doesn't happen because these are not police
21 interrogations. They're just interviews to gather
22 background information.

23 You are married as well?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: There's a chance that your wife

1 will probably be called and interviewed as well. So if
2 you talk to her you may want to let her know that
3 sometime in the next month there might be a federal
4 probation officer calling her just to confirm some of
5 the background information. It's not unusual. Done in
6 almost every case. Spouses, significant others are
7 contacted.

8 Then it generally takes a couple of months
9 to put these reports together. Some people ask why it
10 takes so long. Well, I can tell you these officers are
11 busy. We've got a busy criminal caseload in this state.
12 So it will probably take a couple months. But as soon
13 as the report is prepared it will be in a rough draft
14 form and it will be sent out to both attorneys and
15 they're given a chance to look it over before it comes
16 to me. Mr. Bellmore will get you a copy of that report.

17 When it comes to you it's important that you
18 read it quickly and you read it over thoroughly. We
19 want these reports to be accurate so everybody is given
20 a chance to read it before it's finalized and everybody
21 gets to see it before I do. So read it over carefully.
22 If you notice any errors in that report it's important
23 that you visit with Mr. Bellmore and he'll check into
24 that for you. If you have any difficulty reading any of
25 the report, you need to ask for help. And are you able

1 to read in English well.

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Generally the reports are pretty
4 straightforward but when they start talking about
5 Sentencing Guidelines and things of that sort it's a bit
6 of a foreign language to most people.

7 THE DEFENDANT: I speak foreign languages.

8 THE COURT: So don't be shy about asking
9 questions. Keep in mind there's no such thing as a
10 stupid foolish question. These are important reports.
11 You need to know what it all means for you. And if you
12 don't understand any part of it or understand what
13 significance it has, you need to ask for help.
14 Mr. Bellmore has looked at hundreds and hundreds of
15 these and he can answer any question that you might have
16 and if he doesn't know the answer to the question he can
17 do the same thing I do. Get on the phone with the
18 probation officer that wrote the report or at least he
19 can call the hotline number of the United States
20 Sentencing Commission and ask for an explanation of what
21 it all means. Then we'll have a sentencing hearing.
22 That hearing is presently scheduled for Friday, April
23 20, 2018 at 1:30 in this courtroom in Fargo.

24 THE DEFENDANT: Doesn't that exceed the
25 90-day limit, Your Honor?

1 THE COURT: There's not a strict legal
2 90-day limit. That's a goal that's intended to be
3 reached and if we can get the report out sooner than a
4 couple of months we'll move the sentencing hearing up.

5 THE DEFENDANT: Okay.

6 THE COURT: I sometimes hold sentencing
7 hearings a year after the change of plea hearing has
8 been conducted.

9 THE DEFENDANT: Wow.

10 THE COURT: But we'll try to do it as
11 quickly as we can. And if they get the report done in a
12 month and a half, I'll move the hearing up to even
13 sooner than that. But when they have to write to -- for
14 example, this probation officer will have to write to
15 Arizona to get copies of your criminal records and the
16 judgments of conviction, and sometimes these states
17 don't turn around and respond within a couple of days.
18 Sometimes it's weeks or months before they get the
19 records back. So that's why the 90 days isn't cast in
20 stone and if we don't have a sentencing hearing within
21 90 days then the whole thing falls apart. That's not
22 the case.

23 Do you understand?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Okay. And at the sentencing

1 hearing, like I mentioned to you earlier, both attorneys
2 get a chance to speak. You are given a chance to speak.
3 Both attorneys can submit written materials to me
4 beforehand for my consideration on what guidelines apply
5 and any other legal issues that might surface, including
6 this sex offender registration provision.

7 Both sides can call witnesses. Both parties
8 can submit all kinds of written materials. If you want
9 to submit any letters from people that know you well and
10 letters for me to consider, I would encourage you to
11 think about that. Talk to Mr. Bellmore about that and
12 he can give you some guidance about what judges are
13 interested in hearing from defendants. All that I ask
14 from you is that if you're going to submit any letters
15 that you get them to your attorney a few weeks before
16 the sentencing hearing so they can get properly filed
17 and they get into my hands.

18 Please don't come to the sentencing hearing
19 with a pack of letters that I get five minutes before
20 the hearing and everybody wants me to read them and
21 consider them when I've got only a fleeting moment to
22 wade through them. I'll take the time to read the
23 letters but it's not really fair to me and it's not fair
24 to you if I've got to scurry through a bunch of letters
25 quickly. I generally read letters from defendants and

1 friends and family a couple of times, and I like to read
2 them in the days and weeks before the sentencing hearing
3 rather than the day of so keep that in mind.

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you have any questions?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Anything else that we need to
8 take care of here, gentlemen?

9 MR. GREENLEY: Not from the United States,
10 Your Honor.

11 MR. BELLMORE: I have nothing further, Your
12 Honor.

13 THE COURT: All right. Thank you then.
14 We'll stand adjourned.

15 (Adjourned at 8:50 a.m.)
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CERTIFICATE OF REPORTER

I, Kelly A. Kroke, a duly appointed
Registered Professional Reporter;

DO HEREBY CERTIFY that I reported in
shorthand the foregoing proceedings had and made a
record at the time and place indicated.

I DO HEREBY FURTHER CERTIFY that the
foregoing and attached (32) typewritten pages contain an
accurate transcript of my shorthand notes then and there
taken.

Dated this 26th day of March, 2018.

/s/Kelly A. Kroke
KELLY A. KROKE - RPR, RMR
United States District Court Reporter
District of North Dakota
Eastern Division